

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10 Plaintiff,

11 v.

12 Account No. XXXX6600 located at
13 Metropolitan Commercial Bank, et al.,
14 Defendants.

No. CV-22-00612-PHX-DLR

ORDER

15
16 The Government seeks to forfeit \$3,374,912.96 seized from two accounts at
17 Metropolitan Commercial Bank (“MCB”) in the name of BigBen1613, LLC. The
18 Government alleges that professional money launderers use businesses like BigBen1613
19 to launder drug proceeds. (Doc. 27.) The Government filed this civil forfeiture action on
20 April 14, 2022, and the case was sealed and stayed due to the ongoing criminal
21 investigation. (Docs. 1, 8, 14, 19, 24.) On February 13, 2023, the sealing and stay orders
22 were lifted and the Government filed its First Amended Verified Complaint for Forfeiture
23 in Rem. (Docs. 25, 27.) The Government served Claimants BigBen1613 and MCB on
24 February 22, 2023. Both Claimants noticed claims and filed answers asserting innocent
25 owner defenses. (Docs. 30, 32, 35, 38.)

26 The Clerk of the Court assigned this case to the expedited track pursuant to LRCiv
27 16.2(b)(1)(A)(i). The Court therefore issued a scheduling order without a case management
28 conference on February 23, 2023, setting the deadline for completing fact discovery 6

1 months from the date both an answer and claim are filed, and the deadline for dispositive
2 motions 7 months after the same. (Doc. 31.)

3 On April 4, 2023, BigBen1613 moved for summary judgment on its innocent owner
4 defense. (Doc. 40.) Ten days later, the Government filed a motion to assign this case to the
5 standard or complex track and to schedule a case management conference. (Doc. 41.)
6 BigBen1613 opposed this motion. (Doc. 43.)

7 On May 4, 2023, the Government filed a motion pursuant to Federal Rule of Civil
8 Procedure 56(d), asking this Court to deny or defer ruling on BigBen1613's summary
9 judgment motion until the Government has had an adequate opportunity to conduct
10 discovery into facts surrounding BigBen1613's innocent owner defense. (Doc. 44.)
11 BigBen1613 opposes this motion. (Doc. 52.)

12 On May 30, 2023, the Court granted the Government's motion to assign this case to
13 the standard case management track, vacated the expedited track scheduling order, and
14 scheduled a case management conference for July 6, 2023. (Doc. 62.)

15 Now, the Court considers the Government's Rule 56(d) motion.

16 Under Rule 56(d), "[i]f a nonmovant shows by affidavit or declaration that, for
17 specified reasons, it cannot present facts essential to justify its opposition," the Court may
18 issue any appropriate order, including deferring consideration of the motion for summary
19 judgment or denying it, or allowing "time to obtain affidavits or declarations or to take
20 discovery." Fed R. Civ. P. 56(d). The party requesting relief under Rule 56(d) must set
21 forth in its affidavit or declaration: (1) "specific facts it hopes to elicit from further
22 discovery," (2) that "the facts sought exist," and (3) that "the sought-after facts are essential
23 to oppose summary judgment." *Family Home & Finance Ctr., Inc. v. Fed. Home Loan*
24 *Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008) (discussing former Rule 56(f)). Rule 56(d)
25 relief should generously be granted where a summary judgment motion is filed early in the
26 litigation, "before a party has had any realistic opportunity to pursue discovery relating to
27 its theory of the case." *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of*
28 *the Fort Peck Reservation*, 323 F.3d 767, 773-74 (9th Cir. 2003). Unless the non-moving

1 party has failed to diligently pursue discovery, such relief should be granted “almost as a
2 matter of course.” *Id.* (quoting *Wichita Falls Office Ass’n v. Banc One Corp.*, 978 F.2d
3 915, 919 n.4 (5th Cir. 1992)).

4 BigBen1613’s summary judgment motion—filed roughly a month after its
5 answer—was filed early in the litigation before the Government had a realistic opportunity
6 to pursue discovery related to BigBen1613’s innocent owner defense. This is one of those
7 situations in which the Court should give Rule 56(d) relief generously. What’s more, the
8 Court does not find a lack of diligence on the Government’s part. Rather, it appears the
9 parties have been actively engaged in discovery, including just recently agreeing to the
10 terms of a protective order. (Docs. 55, 58.) Accordingly, Rule 56(d) relief should be granted
11 almost as a matter of course, provided the Government has adequately supported its request
12 with an affidavit. The Government has done so. To support its Rule 56(d) motion, the
13 Government submitted an affidavit from Assistant United States Attorney Bruce R. Van
14 Baren detailing numerous categories of specific information it will seek in discovery, and
15 explaining how such information is relevant to BigBen1613’s innocent owner defense.
16 (Doc. 44-1.)

17 Accordingly, for cause shown, the Court will grant the Government’s Rule 56(d)
18 motion (Doc. 44) and deny BigBen1613’s motion for summary judgment (Doc. 40) without
19 prejudice to BigBen1613 renewing that motion after the parties have meaningfully engaged
20 in discovery. The Court recognizes that BigBen1613 and the Government disagree over
21 the proper scope of discovery. This is an issue the parties can raise with the Court during
22 the July 6, 2023, scheduling conference. For now, however, the Court finds that
23 BigBen1613’s summary judgment motion is premature because the parties have not had
24 adequate time to conduct fact discovery on BigBen1613’s innocent owner defense.

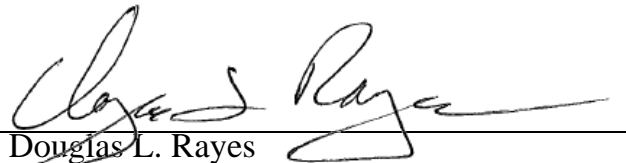
25 ///

26 ///

27 ///

1 **IT IS ORDERED** that the Government's Rule 56(d) motion (Doc. 44) is
2 **GRANTED** and BigBen1613's motion for summary judgment (Doc. 40) is **DENIED**
3 without prejudice to BigBen1613 renewing its motion after the parties have had an
4 adequate opportunity to conduct discovery into BigBen1613's innocent owner defense.

5 Dated this 31st day of May, 2023.

6
7
8 
9 _____
10 Douglas L. Rayes
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28